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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PRISON LEGAL NEWS,)	
)	No. CV-11-029-RHW
Plaintiff,)	
v.)	MEMORANDUM IN
)	OPPOSITION TO PLAINTIFFS'
SPOKANE COUNTY, et al.)	MOTION FOR PRELIMINARY
)	INJUNCTION
Defendants.)	

* * * * *

COME NOW Defendants by and through the undersigned counsel of the Prosecuting Attorney's Office, and submit this Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction.

POLICY 204 – INMATE MAIL

Policy No. 204 was adopted September 1, 2010. The philosophy of Policy 204 provides "Mail is an important means of assisting inmates in maintaining family and community ties while incarcerated. Mail must be regulated and handled in a manner that protects an inmate's constitutional right of expression while maintaining a safe,

1 secure, efficient and effective custodial environment.” An objective of Policy 204 is
2 to prevent smuggling of contraband in order to promote safety and security of the
3 inmates and corrections staff. (Affidavit of McGrath, ¶¶ 4 and 5)

4 Policy No. 204 was amended on February 14, 2011 to eliminate the
5 restriction on outgoing inmate mail to postcards only. (Affidavit of McGrath, ¶6)

7 Policy No. 204 was further amended on February 17, 2011 as follows:

- 8 1. 204.1. The restriction on incoming inmate mail to postcards only shall not
9 apply to legal, official and business mail. Business mail is non-privileged
10 mail includes letters, publications, catalogs and indicating a return address of
11 a verifiable business or non-profit organization.
12 2. 204.8. Authorized Magazines shall not be limited to the ones specified in
Section 204.8.
13 3. New Section establishes due process procedures established for inmates and
senders regarding rejected mail.

14 (Affidavit of McGrath, ¶7)

15 The amendments insure the mail described in Plaintiffs’ complaint and
16 similarly situated mail is not subject to a postcard restriction. (Affidavit of
17 McGrath, ¶8)

18 Notwithstanding the above amendments, Policy 204 still restricts incoming
19 inmate mail to postcards only, except for legal, official and business mail as set
20 forth above. **This remaining component of the postcard policy will be referred**
21 **to hereafter as the “postcard restriction”.** (Affidavit of McGrath, ¶9)

PRELIMINARY INJUNCTION

Plaintiffs seek a preliminary injunction seeking to have Defendants enjoined:

1. from censoring or rejecting mail on the ground that it is not in the form of a postcard;
2. from censoring or rejecting mail on the ground it is a catalog; and
3. For each piece of mail that Defendants censor or reject, the Defendants must give written notice to the sender and addressee... [and the reason for the rejected mail and appeal rights]. (Doc. 3-1)

The first two requests for relief are moot because of Policy No. 204 amendment dated February 17, 2011 which provides in part:

204.1. The restriction on incoming inmate mail to postcards only shall not apply to legal, official and business mail. Business mail is non-privileged mail which includes letters, publications, catalogs and indicating a return address of a verifiable business or non-profit organization.

The third request for relief is moot because Policy No. 204 amendment dated February 17, 2011 provides for notification to inmates and senders of mail which is rejected and provides a review process. (Affidavit of McGrath, ¶8)

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008)

1 Plaintiffs have no basis to seek extraordinary relief to have Defendants
2 enjoined from conduct which Defendants have voluntarily ended without Court
3 intervention. Extraordinary relief under this circumstance is not in the public interest
4 and Plaintiffs can suffer no irreparable harm from policies which are no longer in
5 effect. Defendants further object to the portions of Plaintiff's affidavit based on
6 newspaper and news articles from on-line sources. (Doc. 12). Affidavit testimony
7 about what the affiant read in a newspaper article or from on-line news sources is not
8 based on personal knowledge and is inadmissible hearsay. *Jacobsen v. Filler*, 790
9 F.2d 1362, 1367 (1986).
10

11
12 Plaintiffs request for injunctive relief appears to extend to the "postcard
13 restriction". Plaintiffs have no standing to pursue their case in this regard. Plaintiffs
14 have not made any allegation or argument that they have sent mail which has been
15 censored by the "postcard restriction". In any event, the "postcard restriction" is
16 constitutional under the following Turner analysis.
17

18 **TURNER ANALYSIS**

19 To determine whether the "postcard restriction" "is reasonably related to
20 legitimate penological interests," and therefore valid, the Court must consider four
21 factors: (1) whether there is a valid, rational connection between the "postcard
22 restriction" and the legitimate governmental interest put forward to justify it; (2)
23 whether there are alternative means of exercising the right; (3) whether the impact
24

1 of accommodating the asserted constitutional right will have a significant negative
2 impact on prison guards, other inmates and the allocation of prison resources
3 generally; and (4) whether the “postcard restriction” is an “exaggerated response”
4 to the jail's concerns. *Turner v. Safley*, 482 U.S. 78, 89-90, 107 S. Ct. 2254 96 L.
5 Ed. 2d 64 (1987); *Casey v. Lewis*, 4 F.3d 1516, 1520 (9th Cir.1993).

7 **A. Rational Connection**

8 The first factor the Court must consider is whether there is a rational
9 connection between the “postcard restriction” and a legitimate governmental
10 interest. See *Turner*, 482 U.S. at 89. This requires the Court to determine whether
11 the governmental objective underlying the policy is (1) legitimate, (2) neutral, and
12 (3) whether the “postcard policy” is “rationally related to that objective.”
13 *Thornburgh v. Abbott*, 490 U.S. 401, 414, 109 S.Ct. 1874, 104 L.Ed.2d 459 (1989).

15 The “postcard restriction” is aimed at the safety and security of inmates and
16 staff and maintaining jail security. It is beyond question that both jail security and
17 safety of staff and inmates are legitimate penological interests. See *Thornburg* at
18 415, 109 S.Ct. 1874. The requirement that the “postcard restriction” be “neutral”
19 is also met in this case. The “postcard restriction” is content neutral. One can
20 write as many postcards to inmates as desired. The author can be as candid on the
21 postcard as he desires. The only condition for delivery is compliance with Policy
22
23

1 204 and the nature of the paper mail (i.e. postcard versus sealed envelope).
2 (Affidavit of McGrath, ¶10)

3 Finally, the requirement that the policy be rationally related to the jail's
4 legitimate objectives is met in this case. To show a rational relationship between a
5 regulation and a legitimate penological interest, prison officials need not prove that
6 the banned material actually caused problems in the past, or that the materials are
7 “likely” to cause problems in the future. See *Thornburgh*, 490 U.S. at 417; *Casey*,
8 4 F.3d at 1521. Moreover, it “does not matter whether we agree with” the
9 defendants or whether the policy “in fact advances” the jail's legitimate interests.
10 See *Amatel v. Reno*, 156 F.3d 192, 199 (D.C.Cir.1998). The only question that we
11 must answer is whether the defendants' judgment was “rational,” that is, whether
12 the defendants might reasonably have thought that the policy would advance its
13 interests.
14

15
16 During the time frame of January 1, 2010 through August 31, 2010 mail clerks
17 detected approximately 201 pieces of contraband in or affixed to envelopes.
18 (Affidavit of McGrath, ¶11)

19
20 The contraband included: Glitter or glitter pen writing; scratch cards/stickers;
21 lipstick; sexually explicit material; unknown/unauthorized substance; perfume; color
22 pencils/crayon; labels; glossy finish/Polaroid's; paint/magic markers; cardboard;
23

1 ribbon/string/metal/wire; musical card; plastic/laminated card; home made card;
2 tape/glue; and whiteout. (Affidavit of McGrath, ¶12)

3 These items can be used to conceal liquefied controlled substances, bio-hazards
4 (body fluids, i.e. semen, vaginal secretions, blood) and if not detected and removed
5 before reaching the inmate population, jeopardizes the safety of inmates and
6 corrections officers. Ingestion of the controlled substances (which can include heroin,
7 phencyclidine, lysergic acid diethylamide, cocaine, powdered or ground up pills) can
8 negatively alter behavior up to and including staff and inmate assaults. Contact with
9 bio-hazards can expose staff and inmates to infections (i.e. MRSA). In addition, the
10 contraband can cause allergic reactions to staff and inmates. (Affidavit of McGrath,
11 ¶¶ 13-15, 17-19)

14 Sexually explicit material exposes staff and inmates to materials that are
15 offensive and violates the right to a workplace free of sexually explicit materials. The
16 sexually explicit materials can create discord between offenders leading to fights and
17 assaults. (Affidavit of McGrath, ¶16)

19 Materials like cardboard, ribbon, string, metal, wire, musical cards, plastic,
20 laminated cards and homemade cards can be used to jam/tamper with security
21 equipment, including locking devices. In addition, musical card batteries can be used
22 to create potentially dangerous explosive devices. (Affidavit of McGrath, ¶20)

1 On December 12, 2008, a mail clerk suffered an allergic reaction from a
2 substance contained in an envelope addressed to an inmate. The clerk had an obvious
3 rash around her neck and chest area which spread around the back of her neck and
4 upper shoulders. She was immediately sent to the hospital by ambulance. All inmate
5 booking was directed to Geiger because the risk potential of the contaminate was not
6 identified, and could have spread throughout the facility's air handling system. An
7 incident command protocol was put in place and a HAZMAT team entered the jail
8 administration area to contain the spread of the contaminate and decontaminate staff
9 as well as the affected area. (Affidavit of McGrath, ¶¶21 and 23)

12 The relationship between contraband contained on or within envelopes and
13 the problems sought to be addressed by the limiting certain incoming inmate mail
14 to postcards only is clear. There is less area to search i.e. front and back of
15 postcard versus envelope and contents of an envelope and detection of contraband
16 is easier and more efficient. (Affidavit of McGrath, ¶¶24 and 27) The possibility of
17 jail staff opening envelopes containing unknown substances is eliminated.
18 (Affidavit of McGrath, ¶25) The possibility of contraband contained within the
19 seams of envelopes is eliminated and there are no multiple pages to inspect for
20 contraband. (Affidavit of McGrath, ¶26)

22 The relationship between the "postcard restriction" and the goals of
23 preventing harm to staff and inmates is not so "remote as to render the policy
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1 arbitrary or irrational.” See *Turner*, 482 U.S. at 89-90; *Amatel*, 156 F.3d at 200-
2 01; *Dawson v. Scurr*, 986 F.2d 257, 261 (8th Cir. 1993). The policy satisfies the
3 first multi-faceted factor of the reasonableness standards.

4
5 **B. Alternative Means**

6 The second factor the Court must consider in determining the reasonableness
7 of the policy's restriction on constitutional rights is “whether there are alternative
8 means of exercising the right that remain open to prison inmates.” *Turner*, 482
9 U.S. at 90. “Where ‘other avenues’ remain available for the exercise of the asserted
10 right, courts should be particularly conscious of the ‘measure of judicial deference
11 owed to corrections officials ... in gauging the validity of the regulation.’ ” *Id.*
12 (citations omitted).

14 This factor is not implicated by the Policy. The “postcard restriction”,
15 allows an inmate to receive an unlimited volume of mail without restriction on
16 content or expression. (Affidavit of McGrath, ¶10) The only limitation is
17 compliance with Policy 204 and that the expression must be written on a postcard.
18 The “postcard restriction” does not affect legal, official and business mail which
19 includes letters, publications, catalogs and indicating a return address of a
20 verifiable business or non-profit organization. (Affidavit of McGrath, ¶7)

1 **C. Impact on Others**

2 The third factor that the Court must address is the impact that
3 accommodation of the asserted constitutional right would have on prison
4 personnel, other inmates, and the allocation of prison resources. See *Turner*, 482
5 U.S. at 90. Here, the class of incoming mail excluded from delivery (i.e., personal
6 correspondence not written on post cards) is limited to those found potentially
7 detrimental to order and security in the jail. The impact of unrestricted access
8 would be significant. As discussed previously, such access could lead to
9 introduction of liquefied drugs, bio-hazards and materials that could be used to
10 jam/tamper with security equipment. “Where, as here, the right in question ‘can be
11 exercised only at the cost of significantly less liberty and safety for everyone else,
12 guards and other prisoners alike,’ [we] should defer to the ‘informed discretion of
13 corrections officials.’ ” *Thornburgh*, 490 U.S. at 418 (quoting *Turner*, 482 U.S. at
14 90-92).

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17 **D. Exaggerated Response**

18 The fourth and final factor that the Court must address is whether the policy
19 is an exaggerated response to the jail's concerns.
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21 [T]he absence of ready alternatives is evidence of the reasonableness
22 of a prison regulation. By the same token, the existence of obvious,
23 easy alternatives may be evidence that the regulation is not
24 reasonable, but is an “exaggerated response” to prison concerns. This
is not a “least restrictive alternative” test: prison officials do not have

1 to set up and then shoot down every conceivable alternative method of
2 accommodating the claimant's constitutional complaint. But if an
3 inmate claimant can point to an alternative that fully accommodates
4 the prisoner's rights at de minimis cost to valid penological interests, a
court may consider that as evidence that the regulation does not satisfy
the reasonable relationship standard.

5 *Turner*, 482 U.S. at 90-91 (emphasis added) (citations omitted).

6 The burden is on the prisoner challenging the regulation, not on the prison
7 officials, to show that there are obvious, easy alternatives to the regulation. See
8 *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 350, 107 S. Ct. 2400, 96 L. Ed. 2d 282
9 (1987); It is incumbent upon the prisoners to point to an alternative that
10 accommodates their rights at de minimis cost to security interests. *Casey*, 4 F.3d at
11 1523.
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13 There are no inmate claimants and no showing of an obvious, easy alternative
14 can be made. The Policy satisfies the final factor of reasonableness standard and is
15 constitutional.
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17 CONCLUSION

18 Plaintiffs' prayer for injunctive relief is moot. Defendants have responded to
19 Plaintiffs' prayer with policy amendments which also negates Plaintiffs' contention of
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1 irreparable harm. The remaining “postcard restriction” is constitutional. Plaintiffs’
2 prayer for injunction relief should be denied.

3 DATED this 17th day of February, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Jesse Wing and Katherine Chamberlain.

s/Robert Binger
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